

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of )  
 )  
Section 272(f)(1) Sunset of the BOC Separate ) WC Docket No. 02-112  
Affiliate and Related Requirements )

**QWEST'S COMMENTS ON SECTION 272(f)(1) SUNSET OF THE BOC  
SEPARATE AFFILIATE AND RELATED REQUIREMENTS**

Sharon J. Devine  
Blair A. Rosenthal  
Suite 700  
1020 19th Street, N.W.  
Washington, DC 20036  
(303) 672-2974

Attorneys for

QWEST SERVICES CORP.

August 5, 2002

## TABLE OF CONTENTS

	<u>Page</u>
SUMMARY .....	ii
I. THE COMMISSION SHOULD ALLOW SECTION 272 TO SUNSET WITH ONLY ONGOING REPORTING REQUIREMENTS ASSOCIATED WITH THE APPLICATION OF SECTION 272(e). ....	3
A. Section 272 Was Enacted To Protect Competition In The Long Distance Market, Not The Local Marketplace, And The Extension Of Section 272's Sunset Is Unnecessary To Protect Long Distance Competition.....	4
1. The Continued Imposition of the Structural and Non- Discrimination Safeguards of Section 272 Beyond the Statutory Three-Year Period is not Necessary to Protect Competition in the Long Distance Marketplace.....	5
a. Even Without the Continued Imposition of the Balance of Section 272's Structural and Non- discrimination Requirements, Long Distance Providers Will Be Able to Fairly Compete. ....	7
b. Prior Experience has Indicated that Non-Structural Safeguards are Sufficient to Address Discrimination or Cross-Subsidization. ....	11
2. Even if Local Competition were a Relevant Inquiry for the Section 272 Sunset, Existing Mechanisms are Sufficient to Protect Competition in the Local Marketplace. ....	12
B. The Costs To The BOCs And To Consumers Do Not Justify Any Purported Benefits Of Extending The Sunset.....	13
II. CONCLUSION .....	16

## SUMMARY

The Commission need not extend Section 272's structural separation and non-discrimination requirements in light of other safeguards that will remain in place after the sunset. Specifically, the continued application of Section 272(e), along with associated reporting requirements, will protect competing interexchange carriers from discrimination with respect to facilities, services, or information concerning the BOCs' provision of exchange access. This is the inquiry with which Section 272 is concerned -- whether the BOCs' position in providing exchange access will harm competition in the interexchange market -- not whether there is competition in the local marketplace in general. The latter determination is, of course, a predicate to Section 271 approval, which would occur at least three years prior to the Section 272 sunset.

Apart from the continuing application of Section 272(e) -- which ensures that the BOCs cannot discriminate in any way concerning the provision of exchange access services -- there are a host of other laws and regulatory requirements in place that will ensure a level playing field in the interexchange market. These include: the network disclosure obligations of Section 251(c)(5); the dialing parity requirements of Section 251(b)(3); the interconnection obligations of Section 251(a); and the general duties of Sections 201 and 202 to provide services upon a reasonable request therefor and to refrain from engaging in unjust and unreasonable discrimination.

Accordingly, there is little or no benefit to continuing to impose the structural separation and other requirements of Section 272. By contrast, the continued imposition of unnecessary requirements will impose inefficiencies on the BOCs and corresponding costs on consumers. Accordingly, the Commission should allow Section 272 to sunset in accordance with the statutory three-year period.

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of	)	
	)	
Section 272(f)(1) Sunset of the BOC Separate	)	WC Docket No. 02-112
Affiliate and Related Requirements	)	

**QWEST'S COMMENTS ON SECTION 272(f)(1) SUNSET OF THE BOC  
SEPARATE AFFILIATE AND RELATED REQUIREMENTS**

Pursuant to Section 1.415 of the Federal Communications Commission's ("Commission") Rules, 47 C.F.R. § 1.415, Qwest Services Corp. ("Qwest") hereby submits its comments in response to the *Notice of Proposed Rulemaking* on the timing of Section 272(f)(1)'s sunset of the separate affiliate and related requirements of Section 272.<sup>1</sup> In its *NPRM*, the Commission seeks comment on how developments in the local exchange marketplace should inform its consideration of the extension, and how continued application of the statutory safeguards would affect competition in the interexchange market.<sup>2</sup> The Commission also seeks comment on how additional factors might affect the Commission's consideration, including: past cost misallocation or discrimination by the Bell Operating Companies ("BOC"); the BOCs' wholesale performance; and the factual findings contained in the Section 272 biennial audits.<sup>3</sup> Finally, the Commission requests comment on potential options under Section 272(f)(1), including: (1) allowing the statutory requirements to sunset three years after Section 271 authorization on a

---

<sup>1</sup> *In the Matter of Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements*, WC Docket No. 02-112, *Notice of Proposed Rulemaking*, DA 02-148, rel. May 24, 2002 ("*NPRM*").

<sup>2</sup> *Id.* ¶¶ 12-13.

<sup>3</sup> *Id.* ¶¶ 15-16.

state-by-state basis; (2) extending the statutory period of time for a defined period for all BOCs; (3) allowing the statutory requirements to sunset after three years, but adopting less stringent structural separation requirements; (4) allowing the statutory requirements to sunset, but retaining the statutory biennial audit requirements; or (5) allowing the statutory requirements to sunset after three years, but adopting some form of nonstructural safeguards, such as reporting requirements.<sup>4</sup>

The Commission need not extend Section 272's structural separation and non-discrimination requirements in light of other safeguards that will remain in place after the sunset. Specifically, the continued application of Section 272(e), along with associated reporting requirements, will protect competing interexchange carriers from discrimination with respect to facilities, services, or information concerning the BOC's provision of exchange access. This is the inquiry with which Section 272 is concerned -- whether the BOCs' position in providing exchange access will harm competition in the interexchange market -- not whether there is competition in the local marketplace in general. The latter determination is, of course, a predicate to Section 271 approval, which would occur at least three years prior to the Section 272 sunset.

Apart from the requirements of Section 272(e), there are a host of other laws and regulatory requirements in place that will ensure a level playing field in the competitive interexchange market. Accordingly, there is little or no benefit to continuing to impose the structural separation and other requirements of Section 272. To the contrary, the continued imposition of unnecessary requirements will impose inefficiencies on the BOCs and corresponding costs on consumers.

---

<sup>4</sup> *Id.* ¶ 17.

Accordingly, the Commission should allow Section 272 to sunset in accordance with the statutory three-year period.

I. THE COMMISSION SHOULD ALLOW SECTION 272 TO SUNSET WITH ONLY ONGOING REPORTING REQUIREMENTS ASSOCIATED WITH THE APPLICATION OF SECTION 272(e).

As an initial matter, the proponent of an extension of the sunset date bears the burden of proof concerning its necessity. Congress provided that the Section 272 requirements will sunset within three years after the BOCs' receipt of approval for a given state, "unless the Commission extends such 3-year period by rule or order."<sup>5</sup> Because the "the proponent of a rule or order has the burden of proof" under the Administrative Procedure Act,<sup>6</sup> any proponent of an extension must demonstrate the continued need for the Section 272 requirements. Indeed, in construing the sunset of a different provision of the 1996 Act, the Commission concluded that a sunset reflects a "policy judgment" and "legislative compromise" made by Congress that should not be upset "based on arguments Congress found unpersuasive in 1996," and concluded that the advocate of a different sunset date should demonstrate circumstances that were unanticipated at the time the statute was adopted.<sup>7</sup> Finally, in considering the continued application of the requirements of Section 272 beyond the statutory three-year period, the Commission should be

---

<sup>5</sup> 47 U.S.C. § 272(f)(1).

<sup>6</sup> 5 U.S.C. § 556(d).

<sup>7</sup> See *In the Matter of Petition of Ameritech Corporation for Forbearance from Enforcement of Section 275(a) of the Communications Act of 1934, As Amended*, Memorandum Opinion and Order, 15 FCC Rcd. 7066, 7070 ¶ 8 (1999) (rejecting Ameritech's request to apply an earlier sunset date to the restrictions on alarm monitoring services contained in Section 275).

mindful of its obligation to remove unnecessary regulatory burdens that hinder competition.<sup>8</sup>

A. Section 272 Was Enacted To Protect Competition In The Long Distance Market, Not The Local Marketplace, And The Extension Of Section 272's Sunset Is Unnecessary To Protect Long Distance Competition.

In the *NPRM*, the Commission inquired how development of competition in the local exchange market should inform its consideration of the sunset.<sup>9</sup> Because Section 272 was not enacted to protect local competition, and because other sections of the Act serve that purpose, the Commission need not consider local competition in this Section 272 sunset inquiry. Indeed, in the *Non-Accounting Safeguards* docket, in which the Commission implemented the majority of the requirements of Section 272, the Commission found that “[t]he section 251 requirements are designed to ensure that incumbent LECs [local exchange carriers] do not discriminate in opening their bottleneck facilities to competitors.”<sup>10</sup> Moreover, Section 272 may sunset for a particular BOC no sooner than three years after the BOC received approval under Section 271(d), which requires that the BOC will have met the local-market-opening conditions of Section 271.<sup>11</sup> In contrast to the local-market-opening goals of Sections 251 and 271, the Commission found that the “goal [of Section 272] is to ensure that BOCs do not use their control over local exchange bottlenecks to undermine competition in the new markets they are entering -- interLATA services and manufacturing . . . [and] to protect competition in these markets from the BOCs’

---

<sup>8</sup> See Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 § 706 (1996), *codified at* 47 U.S.C. § 157 note; 47 U.S.C. §§ 160, 161.

<sup>9</sup> *NPRM* ¶ 12.

<sup>10</sup> *In the Matter of Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, First Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd. 21905, 22001-02 ¶ 205 (1996) (“*Non-Accounting Safeguards Order*”).

<sup>11</sup> See 47 U.S.C. § 272(f)(1); 47 U.S.C. § 271(d).

ability to use their existing market power in local exchange services to obtain an anticompetitive advantage.”<sup>12</sup> Because Section 272 was not intended to protect competition in the local marketplace, the Commission need not consider local competition in examining the sunset of Section 272.

1. The Continued Imposition of the Structural and Non-Discrimination Safeguards of Section 272 Beyond the Statutory Three-Year Period is not Necessary to Protect Competition in the Long Distance Marketplace.

The Commission need not extend the sunset date of the Section 272 requirements to protect competition in the long distance marketplace. First, as the Commission found in the *National Directory Assistance Order*, “competition is the most effective means of ensuring that charges, practices, classifications, and regulations with respect to . . . [a particular service] are just and reasonable, and not unjustly or unreasonably discriminatory.”<sup>13</sup> The key is whether competing providers can compete on a level playing field.<sup>14</sup>

In the past, the Commission has repeatedly determined that structural separation was not necessary to ensure a level playing field in the new markets the BOCs were entering. For instance, in 1986, the Commission found that the “inefficiencies and other costs to the public associated with structural separation significantly outweigh the corresponding benefits” and concluded that the structural

---

<sup>12</sup> *Non-Accounting Safeguards Order*, 11 FCC Rcd. at 22002 ¶ 206.

<sup>13</sup> *In the Matter of Petition of U S WEST Communications, Inc. for a Declaratory Ruling Regarding the Provision of National Directory Assistance; Petition of U S WEST Communications, Inc. for Forbearance; The Use of N11 Codes and Other Abbreviated Dialing Arrangements, Memorandum Opinion and Order*, 14 FCC Rcd. 16252, 16270 ¶ 31 (1999).



separation requirements for new information services should be eliminated.<sup>15</sup> The Commission later reiterated this conclusion, and allowed the BOCs to provide information services subject only to non-structural safeguards, finding that this would “result[] in the wider availability of [information] services to the public, while effectively ensuring that BOC participation in enhanced services does not adversely affect basic service rates or harm ESPs [enhanced service providers] due to BOC anticompetitive conduct.”<sup>16</sup>

Thereafter, the Commission found that regardless of the BOCs’ ability to provide information services on an integrated basis, competition “has continued to increase markedly as new competitive ISPs [information service providers] have entered the market.”<sup>17</sup> More recently, the Commission found that non-structural safeguards were “conducive to the operation of a fair and competitive market for information services,” and concluded that the Commission’s enforcement authority was sufficient to ensure that BOCs fulfilled their comparably efficient

---

<sup>14</sup> *Id.* at 16273 ¶ 36.

<sup>15</sup> *In the Matters of: Amendment of Section 64.702 of the Commission’s Rules and Regulations (Third Computer Inquiry); and Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Thereof; Communications Protocols under Section 64.702 of the Commission’s Rules and Regulations, Report and Order*, 104 FCC 2d 958, 986 ¶ 46 (1986) (“*Third Computer Inquiry*”).

<sup>16</sup> *In the Matter of Computer III Remand Proceedings, Bell Operating Company Safeguards and Tier 1 Local Exchange Company Safeguards, Report and Order*, 6 FCC Rcd. 7571, 7617 ¶ 98 (1991).

<sup>17</sup> *In the Matter of Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services, 1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements, Further Notice of Proposed Rulemaking*, 13 FCC Rcd. 6040, 6063-64 ¶ 36 (1998).

interconnection requirements, which mandate non-discriminatory treatment of ISPs.<sup>18</sup>

Finally, in permitting the Section 272 requirements to sunset with respect to interLATA, information services, the Commission specifically cited Sections 201, 202, 251(c)(5), 251(g), and 272(e) of the Act to support its conclusions that “there are nonstructural safeguards that will limit the BOCs’ ability to discriminate against nonaffiliated information service providers.”<sup>19</sup>

Just as the Commission has found in these other contexts, there is no evidence even to suggest that remaining non-structural safeguards will be insufficient to protect competition in the interexchange market.

- a. Even Without the Continued Imposition of the Balance of Section 272’s Structural and Non-discrimination Requirements, Long Distance Providers Will Be Able to Fairly Compete.

The extension of the sunset is unnecessary to ensure competition in the long distance market because remaining non-structural safeguards will suffice. Chief among these are the provisions of Section 272(e), which will not sunset regardless of when the balance of the Section does. Along with the general application of Section

---

<sup>18</sup> *In the Matter of Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services, 1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements, Report and Order*, 14 FCC Rcd. 4289, 4297 ¶ 11, 4300-01 ¶ 15 (1999).

<sup>19</sup> *In the Matter of Request for Extension of the Sunset Date of the Structural, Nondiscrimination, and Other Behavioral Safeguards Governing Bell Operating Company Provision of In-Region, InterLATA Information Services, Order*, 15 FCC Rcd. 3267, 3268 ¶ 3 (2000).

272(e), Qwest supports the continued reporting requirements associated with Section 272(e) to which the BOCs committed in seeking Section 271 approval.<sup>20</sup>

The continued application of Section 272(e) will ensure that BOCs cannot use any residual control over local exchange bottlenecks to undermine competition in the long distance marketplace. First, Section 272(e)(1)-(2) provides that BOCs “shall fulfill any requests from an unaffiliated entity for telephone exchange service and exchange access within a period no longer than the period in which it provides such telephone exchange service and exchange access to itself or to its affiliates,” and that the BOC must make “any facilities, services, or information concerning its provision of exchange access” that it provides to its affiliate available to other providers of interLATA services on the same terms and conditions.<sup>21</sup> Thus, Section 272(e)(1) will continue to impose an absolute prohibition against the BOCs fulfilling requests for telephone exchange service and exchange access for itself or its affiliate any more quickly than it fulfills such requests for competing providers. Moreover, the BOC may not discriminate between its affiliate and any competing long distance provider with respect to “facilities, services, or information concerning [the BOC’s] provision of exchange access.”<sup>22</sup>

The continued enforcement of Section 272(e)(3) will also prevent the BOCs from engaging in a price squeeze. This section provides that the BOC “shall charge

---

<sup>20</sup> Of course, once the BOCs cease to have market power, such reporting requirements would no longer be necessary and should be eliminated.

<sup>21</sup> 47 U.S.C. § 272(e)(1)-(2).

<sup>22</sup> 47 U.S.C. § 272(e)(2).

[its 272] affiliate . . . or impute to itself (if using the access for its provision of its own services), an amount for access to its telephone exchange service and exchange access that is no less than the amount charged to any unaffiliated interexchange carriers for such service.”<sup>23</sup> If the BOC or its interLATA affiliate charges a rate for its interLATA services below its incremental cost to provide service, and this rate were sustained for an extended period, such conduct would violate Sections 201 and 202 of the Communications Act.

Finally, Section 272(e)(4) allows a BOC to “provide any interLATA or intraLATA facilities or services to its interLATA affiliate” but only “if such services or facilities are made available to all carriers at the same rates and on the same terms and conditions, and so long as the costs are appropriately allocated.”<sup>24</sup> Thus, Section 272(e)(4) will prevent the BOC from discriminating with respect to intraLATA facilities or services, or shifting costs with respect to such facilities or services.

Apart from Section 272(e), additional safeguards will remain that are sufficient to protect competition in the long distance marketplace. For instance, antitrust laws generally protect competition in the long distance marketplace. Moreover, Section 251(c)(5) will impose continuing network disclosure obligations on the BOCs. This section obligates BOCs (and other incumbent LECs) to “provide reasonable public notice of changes in the information necessary for the transmission and routing of services using that local exchange carrier’s facilities or

---

<sup>23</sup> 47 U.S.C. § 272(e)(3).

networks, as well as of any other changes that would affect the interoperability of those facilities and networks.”<sup>25</sup> Coupled with Section 272(e)(1), Section 251(c)(5) will continue to prohibit the BOCs from discriminating with respect to changes in the information necessary for the transmission and routing of services using that LEC’s facilities or networks.<sup>26</sup> Similarly, even after Section 272 sunsets, the BOCs will continue to have the obligation to “provide dialing parity to competing providers of telephone exchange service and telephone toll service, and the duty to permit all such providers to have nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing, with no unreasonable dialing delays.”<sup>27</sup>

Even after Section 272 sunsets, the continued application of the part 32 and part 64 rules will prohibit the BOCs from cross-subsidizing the long distance operations of itself or an affiliate with regulated dollars.<sup>28</sup> As long as these accounting rules are in place they will prevent any possible cross-subsidization.<sup>29</sup> But even if the accounting rules were eliminated, the BOCs have no incentive to shift costs under the price cap rules, because such costs are not recoverable.

---

<sup>24</sup> 47 U.S.C. § 272(e)(4).

<sup>25</sup> 47 U.S.C. § 251(c)(5).

<sup>26</sup> *See Non-Accounting Safeguards Order*, 11 FCC Rcd. at 22002-03 ¶ 208.

<sup>27</sup> 47 U.S.C. § 251(b)(3).

<sup>28</sup> The BOCs have generally advocated that these rules are no longer necessary -- because the price cap rules do not allow the BOCs to recover such costs, and have thereby eliminated any incentive to shift costs.

<sup>29</sup> In any states that continue to base rates on a fixed rate-of-return, the state would undoubtedly disallow any costs that are shifted from the interLATA affiliate to the BOC.

Regardless of the sunset of Section 272, the BOCs will also continue to have duties to interconnect with interexchange carriers on terms and conditions that are just and reasonable.<sup>30</sup>

Finally, all of these requirements will be subject to enforcement through the Commission's general complaint jurisdiction.<sup>31</sup>

b. Prior Experience has Indicated that Non-Structural Safeguards are Sufficient to Address Discrimination or Cross-Subsidization.

Prior experience has generally not provided evidence that allowing the Section 272 requirements to sunset will inhibit competition in the long distance marketplace. The biennial audits of Verizon and SBC have revealed nothing more than potentially minor violations of Section 272. Moreover, experience in other areas where structural separation requirements have been eliminated demonstrate that there would be no benefit to its continued imposition. Indeed, there have been no complaints that the relaxation of structural separation requirements has resulted in discrimination or cross-subsidization by the BOCs. For instance, there have been no complaints that relaxation of the 272 requirements for interLATA, information services has resulted in discrimination or cross-subsidization by those BOCs that have obtained 271 relief. Nor have there been complaints that the relaxation of the structural safeguards for electronic publishing by the BOCs<sup>32</sup> has

---

<sup>30</sup> See 47 U.S.C. §§ 201, 251(a).

<sup>31</sup> 47 U.S.C. § 208.

<sup>32</sup> See 47 U.S.C. § 274(g)(2) (requirements sunset four years after enactment of the 1996 Act).

resulted in discrimination or cross-subsidization. Similarly, there have been no complaints that non-structural safeguards remaining for BOC provision of alarm monitoring services have resulted in discrimination or cross-subsidization.<sup>33</sup>

Accordingly, prior experience does not support the need for structural safeguards to prevent discrimination or cross-subsidization.

2. Even if Local Competition were a Relevant Inquiry for the Section 272 Sunset, Existing Mechanisms are Sufficient to Protect Competition in the Local Marketplace.

Even if it were germane for the Commission to consider local competition in conducting this sunset inquiry, the existing mechanisms under the Act, the Commission's rules, and other laws of general applicability are more than sufficient to protect local competition.

First, the Commission has broad enforcement powers to prevent the BOCs from backsliding with respect to the market-opening conditions of the original Section 271 approval.<sup>34</sup> Specifically, the Commission is empowered to: (1) issue an order to correct a deficiency; (2) impose a penalty pursuant to Title V of the Act; or (3) suspend or revoke the Section 271 approval.<sup>35</sup> Given the Commission's ability to potentially revoke a BOC's Section 271 approval for backsliding, continued enforcement of the Section 272 requirements beyond the statutory three-year period is wholly unnecessary.

Second, to the extent that the BOCs otherwise engage in anticompetitive behavior in the local exchange market, competitive LECs can pursue any remedies

---

<sup>33</sup> 47 U.S.C. § 275(a)(2), (b) (prohibiting BOCs from entering alarm monitoring business prior to five years after enactment of 1996 Act, and requiring BOCs to refrain from discriminating against competing providers or cross-subsidizing its own alarm monitoring services).

<sup>34</sup> 47 U.S.C. § 271(d)(6)(A).

<sup>35</sup> *Id.*

available to them under the Section 251 interconnection agreements that are approved by state commissions pursuant to Section 252. These remedies typically include claims in arbitration or the courts, or pursuit of a complaint before the appropriate state commission. This Commission has also demonstrated a willingness to hear complaints concerning enforcement of interconnection agreements or the general requirements of Section 251.<sup>36</sup>

Third, concerns about BOC backsliding in the local exchange marketplace may be addressed through enforcement of the BOCs' performance assurance plans.

Finally, concerns about BOC anticompetitive behavior in the local markets may also be addressed through application of the antitrust laws.

B.     The Costs To The BOCs And To Consumers Do Not  
          Justify Any Purported Benefits Of Extending The Sunset.

The costs to the BOCs and to consumers outweigh the limited benefits of continued imposition of the Section 272 requirements.

First, the continued imposition of a structural separation requirement inflicts direct costs on the BOCs with little countervailing benefit. These costs stem from the inefficiencies associated with the requirement that the BOCs maintain networks that are separate from those of their Section 272 affiliates, and maintain separate workforces that perform operating, installation, and maintenance work on those networks. For instance, continued imposition of the structural separation

---

<sup>36</sup> See, e.g., *In the Matter of Joint Applications of Global Crossing Ltd., and Citizens Communications Company for Authority To Transfer Control of Corporations Holding Commission Licenses and Authorizations Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 20, 22, 63, 78, 90, and 101 of the Commission's Rules*, Memorandum Opinion and Order, 16 FCC Rcd. 8507, 8511-12 ¶ 11 (2001) (encouraging commenter in license transfer proceeding to pursue the general Section 251 allegations



requirements would preclude the BOCs and their Section 272 affiliates from jointly owning a next generation switch that could perform both local and long distance switching functions. Similarly, the structural separation requirements would preclude the BOCs and their Section 272 affiliates from using the same set of network employees to repair their respective transmission facilities in the event of a cable cut -- even where those transmission facilities lie side-by-side in the same trench.

The costs of an unnecessary extension would also include general compliance and training activities, such as investigating whether a given service or activity is permissible under Section 272; documenting and posting all transactions between the BOC and its Section 272 affiliate; building and maintaining firewalls between systems to keep the BOC's data separate from the Section 272 affiliate and otherwise maintaining separation between employees of the BOC and the Section 272 affiliate.

Second, although the long distance market is competitive, AT&T, WorldCom, and Sprint nonetheless dominate that market, and they are not required to separate their long distance activities from their local exchange activities. By permitting the structural and non-discrimination safeguards to sunset, the Commission will actually increase competition in the long distance market by allowing the BOCs (or their long distance affiliates) to compete more effectively against the oligopolists. The Commission has also previously recognized that

---

concerning collocation in an enforcement or complaint proceeding pursuant to Section 208 of the Act).

“structural separation imposes direct costs on the BOCs” and consequently “the BOCs are unable to organize their operations in the manner best suited to the markets and customers they serve.”<sup>37</sup> “The net result . . . is that structural separation prevents consumers from obtaining services and service combinations that they desire.”<sup>38</sup>

Finally, the continued imposition of an unnecessary regulatory burden is inconsistent with the purpose of the 1996 Act. Indeed, implicit in the 1996 Act is the presumption in favor of removing unnecessary regulatory burdens so as to avoid their societal cost.<sup>39</sup>

---

<sup>37</sup> *Third Computer Inquiry*, 104 FCC 2d at 1008 ¶ 91.

<sup>38</sup> *Id.*

<sup>39</sup> *See* note 8 *supra*

## II. CONCLUSION

For the reasons stated above, other than the requirements of Section 272(e) and its associated reporting obligations, the Commission should allow the requirements of Section 272 to sunset after the statutory three-year period without extending the sunset date.

Respectfully submitted,

QWEST SERVICES CORP.

By: Blair A. Rosenthal  
Sharon J. Devine  
Blair A. Rosenthal  
Suite 700  
1020 19th Street, N.W.  
Washington, DC 20036  
(303) 672-2974

Its Attorneys

August 5, 2002

## CERTIFICATE OF SERVICE

I, Richard Grozier, do hereby certify that I have caused the foregoing **QWEST'S COMMENTS ON SECTION 272(f)(1) SUNSET OF THE BOC SEPARATE AFFILIATE AND RELATED REQUIREMENTS** to be filed with the FCC via its Electronic Comment Filing System, and a copy of the **COMMENTS** to be served, via email, on the FCC's contractor Qualex International.

Richard Grozier  
Richard Grozier

August 5, 2002

Qualex International

[qualexint@aol.com](mailto:qualexint@aol.com)